LEMBAGA PERTUBUHAN PELADANG MALAYSIA v. SAIMAN UMAR

COURT OF APPEAL, PUTRAJAYA
ABU SAMAH NORDIN JCA
MOHTARUDIN BAKI JCA
HAMID SULTAN ABU BACKER JCA
[CIVIL APPEAL NO: J-01-114-2011]
20 DECEMBER 2012

ADMINISTRATIVE LAW: *Public servants – Dismissal – Whether unlawful, null and void – Failure to comply with Peraturan-Peraturan Pegawai Lembaga Pertubuhan Peladang (Kelakuan dan Tatatertib) 1994 (Disciplinary Rules) – Allegation of – Whether disciplinary proceedings tainted – Whether there was failure to consider issues raised in submissions – Whether court had jurisdiction to grant declaration of unlawful dismissal sought by respondent – Whether respondent given reasonable opportunity to be heard – Whether pre-requisites of rr. 25 & 28 of Disciplinary Rules complied with*

The respondent was employed by the appellant on 28 December 1973 as a clerk and subsequently was promoted to become an assistant officer of economic affairs. On 21 June 2000, the appellant issued a show cause letter to the respondent alleging that the latter had borrowed a sum of RM40,000 from a contractor, one Madzlan. Subsequently, the appellant brought two charges against the respondent pursuant to r. 28 of the Peraturan-Peraturan Pegawai Lembaga Pertubuhan Peladang (Kelakuan dan Tatatertib) 1994 ('Disciplinary Rules') in relation to the borrowing incident (i) for behaving in a way that would raise suspicions that he was using his official position for his own benefit (r. 4(2)(c)(ii) of the Disciplinary Rules); and (ii) for putting himself in a position of financial obligation with someone who had official business with the appellant (rr. 10(1)(a) and 12(1)(b) of the Disciplinary Rules). The respondent denied the charges. The appellant informed the respondent that he was guilty of both charges and that the respondent was to be sacked from his employment pursuant to r. 38 of the Disciplinary Rules. The respondent appealed against the appellant's decision on the ground that a hearing was supposed to be held before the decision was passed and he was not given the opportunity to cross-examine witnesses and scrutinise any related documents. The Disciplinary Appellate Committee dismissed the respondent's appeal and affirmed the Disciplinary Committee's decision and sentence. The respondent subsequently sued the appellant for unlawful dismissal in the High Court. The High Court was of the view that, in the circumstances of this case, there did not appear to be any reason why it was impractical to give the respondent an opportunity to be heard and to call witnesses. The High Court thus held that the failure to comply with sub-r. 25(2) of the Disciplinary Rules was fatal and it had tainted the entire disciplinary proceedings with illegality. Accordingly, the

court found that the dismissal of the respondent was unlawful, null and void. Hence, the appellant appealed. The issues that arose were (i) whether the High Court had failed to put the election of no case to answer to the appellant's lawyer; (ii) whether the High Court had failed to appreciate that the court had no jurisdiction to grant the declaration sought by the respondent; (iii) whether the High Court had failed to consider the appellant's written submission and appreciate that the respondent's submission was not its pleaded case; and (iv) whether the High Court had incorrectly decided that the interpretation of rr. 25 and 28 of the Disciplinary Rules were relevant in deciding the respondent's claim.

Held (allowing appeal)
Per Mohtarudin Baki JCA delivering the judgment of the court:

(1) The judge is under a duty to put the election of no case to answer to the defence counsel. It is to ensure that the court would not decide a matter on a submission of no case to answer until and unless there is such an election. In the absence of such election, the defence counsel is entitled to call further evidence and not be bound by such election. Therefore, the learned judge herein had erred in failing to put such election to the appellant's counsel during trial. (paras 15 & 16)

(2) A dismissed employee cannot claim any declaration that his dismissal was void and expect for reinstatement. However, the judge in granting the declaration did not make an order of reinstatement of the respondent to his previous post. There was in fact no prayer for reinstatement in the amended statement of claim. The main prayer was for a declaration that his dismissal was unlawful. In consequence thereof, he had asked for general and special damages. (para 21)

(3) It was essential for the judge to scrutinise every issue raised by the parties of the proceedings. From the grounds of judgment, the learned judge had failed to appreciate the issues raised by the appellant in its submission. Thus, it raised the inference that they were not considered at all. (para 24)

(4) The respondent claimed that the appellant had breached r. 25(2) of the Disciplinary Rules and had pleaded that he was not given a reasonable opportunity to be heard. However, the respondent did not plead that he was not afforded an oral hearing at the Committee of Inquiry. There was a slight difference between 'a reasonable opportunity to be heard' and 'an oral hearing'. From the evidence, the respondent was given such opportunity *ie*, to be heard and was given sufficient time to reply to the show cause letter. Therefore, the respondent had failed to prove a pleaded case that he was not given a reasonable opportunity to be heard but at the same time, he had adduced evidence to prove that he was given of such opportunity. (paras 26, 28 & 30)

(5) All pre-requisites under r. 25 of the Disciplinary Rules had been fulfilled *ie,* by giving him a show cause letter informing him about the charges preferred against him and he was given about two months to reply to the said letter before the Committee decided to dismiss him from his employment with the appellant. The procedure as stipulated under r. 28(1) of the Disciplinary Rules had also been complied with. Rule 28(4) of the Disciplinary Rules does not place any requirement to explain in writing, why the investigation committee was not required. Furthermore, there was nothing in the sub-provision that placed such burden on them. Therefore, to read the requirements under r. 25(2)(b) of the Disciplinary Rules into r. 28(4) was wrong. It was a clear and unambiguous provision of the statute and must be given their natural and ordinary meaning. All procedures had been complied with by the appellant in dismissing the respondent from his employment. (paras 32, 33, 35, 36, 37 & 38)

Bahasa Malaysia *Translation Of Headnote*

Responden telah diambil kerja oleh perayu pada 28 Disember 1973 sebagai seorang kerani dan kemudiannya dinaikkan pangkat sebagai seorang pegawai pembantu hal ehwal ekonomi. Pada 21 Jun 2000, perayu telah mengeluarkan surat tunjuk sebab kepada responden dengan dakwaan bahawa responden telah meminjam duit berjumlah RM40,000 daripada seorang kontraktor bernama Madzlan. Berikutan itu, perayu membawa dua pertuduhan terhadap responden di bawah per. 28 Peraturan-Peraturan Pegawai Lembaga Pertubuhan Peladang (Kelakuan dan Tatatertib) 1994 ('Peraturan Tatatertib') berkaitan dengan kejadian pinjaman tersebut iaitu (i) kerana berkelakuan dengan cara yang akan menimbulkan syak bahawa dia telah menggunakan jawatan rasminya untuk kepentingannya sendiri (per. 4(2)(c)(ii) Peraturan Tatatertib); dan (ii) kerana meletakkan dirinya dalam satu kedudukan obligasi kewangan dengan seseorang yang mempunyai urusan rasmi dengan perayu (per. 10(1)(a) dan 12(1)(b) Peraturan Tatatertib). Responden telah menafikan pertuduhan-pertuduhan tersebut. Perayu telah memaklumkan kepada responden bahawa dia didapati bersalah atas kedua-dua pertuduhan tersebut dan bahawa responden akan dipecat dari pekerjaannya menurut per. 38 Peraturan Tatatertib. Responden merayu terhadap keputusan perayu atas alasan bahawa satu perbicaraan sepatutnya dijalankan sebelum keputusan dicapai dan dia tidak diberikan peluang untuk memeriksa-balas saksi-saksi dan meneliti mana-mana dokumen yang berkaitan. Jawatankuasa Rayuan Tatatertib telah menolak rayuan responden dan mengesahkan keputusan dan hukuman Jawatankuasa Tatatertib. Responden kemudiannya menyaman perayu untuk pemecatan menyalahi undang-undang di Mahkamah Tinggi. Mahkamah Tinggi berpendapat bahawa, dalam keadaan kes ini, tiada alasan mengapa ia tidak praktikal untuk memberikan responden peluang untuk dibicarakan dan untuk memanggil saksi-saksi. Mahkamah

Tinggi dengan itu memutuskan bahawa kegagalan untuk mematuhi per. 25(2) Peraturan Tatatertib adalah memudaratkan dan prosiding tatatertib telah dicemari oleh kepenyalahan undang-undang secara keseluruhan. Sewajarnya, mahkamah mendapati bahawa pemecatan responden menyalahi undang-undang, terbatal dan tidak sah. Oleh itu, perayu merayu. Isu-isu yang dibangkitkan adalah (i) sama ada Mahkamah Tinggi gagal meletakkan pilihan tiada kes untuk dijawab kepada peguam perayu; (ii) sama ada Mahkamah Tinggi gagal mempertimbangkan bahawa mahkamah tidak mempunyai bidang kuasa untuk membenarkan deklarasi yang dituntut oleh responden; (iii) sama ada Mahkamah Tinggi telah gagal mengambil kira hujahan-hujahan bertulis perayu dan gagal menghargai bahawa hujahan responden bukan kes yang diplidnya; dan (iv) sama ada Mahkamah Tinggi telah terkhilaf apabila memutuskan bahawa pentafsiran per. 25 dan per. 28 Peraturan Tatatertib adalah relevan dalam memutuskan tuntutan responden.

Diputuskan (membenarkan rayuan)

Oleh Mohtarudin Baki HMR menyampaikan penghakiman mahkamah:

(1) Hakim bertanggungjawab untuk memberikan pilihan tiada kes untuk dijawab kepada peguam pembela. Ia adalah untuk memastikan bahawa mahkamah tidak akan membuat keputusan berkenaan perkara berdasarkan hujahan tiada kes untuk dijawab sehingga dan melainkan terdapat pilihan sedemikian. Dalam ketiadaan pilihan tersebut, peguam pembela berhak untuk memanggil keterangan lanjut dan tidak terikat dengan pilihan sedemikian. Oleh itu, hakim telah terkhilaf dalam kegagalannya untuk memberikan pilihan sedemikian kepada peguam perayu semasa perbicaraan.

(2) Seorang pekerja yang telah dipecat dari pekerjaannya tidak boleh menuntut deklarasi bahawa pemecatan dari pekerjaannya adalah tidak sah dan mengharapkan untuk pengambilan semula. Tetapi hakim dalam membenarkan deklarasi tersebut tidak membuat perintah pengambilan semula responden kepada jawatannya sebelum ini. Tidak terdapat tuntutan pengambilan semula dalam pernyataan tuntutan terpinda. Tuntutan utama adalah untuk deklarasi bahawa pemecatan dari pekerjaannya adalah menyalahi undang-undang. Berbangkit daripadanya, dia telah meminta ganti rugi am dan khas.

(3) Adalah penting untuk hakim meneliti setiap isu yang dibangkitkan oleh pihak-pihak yang terlibat dalam prosiding. Apa yang telah dipertimbangkan oleh hakim hanya boleh dilihat daripada alasan penghakiman. Daripada alasan penghakiman, hakim gagal untuk mempertimbangkan isu-isu yang telah dibangkitkan oleh perayu dalam hujahannya. Oleh itu, ia menimbulkan inferens bahawa ia telah tidak diambil kira sama sekali.

(4) Responden mendakwa bahawa perayu telah melanggar per. 25(2) Peraturan Tatatertib dan telah memplidkan bahawa dia tidak diberikan peluang yang munasabah untuk dibicarakan. Walau bagaimanapun, responden tidak memplidkan bahawa dia telah diberikan peluang untuk dibicarakan secara lisan dalam Jawatankuasa Siasatan. Terdapat sedikit perbezaan antara 'peluang yang munasabah untuk dibicarakan' dan 'perbicaraan secara lisan'. Daripada keterangan yang dikemukakan, responden telah diberikan peluang sedemikian iaitu untuk dibicarakan dan telah diberikan masa yang mencukupi untuk menjawab surat tunjuk sebab. Oleh itu, responden telah gagal untuk membuktikan kes yang diplidkan bahawa dia tidak diberikan peluang munasabah untuk dibicarakan tetapi pada masa yang sama, dia telah mengemukakan keterangan untuk membuktikan bahawa dia telah diberikan peluang sedemikian.

(5) Segala pra-syarat di bawah per. 25 Peraturan Tatatertib telah dipatuhi iaitu dengan memberikan surat tunjuk sebab memaklumkan kepada responden berkenaan pertuduhan-pertuduhan terhadapnya dan bahawa dia telah diberi tempoh dua bulan untuk menjawab surat tersebut sebelum Jawatankuasa tersebut memutuskan untuk memecatnya daripada pekerjaannya dengan perayu. Prosedur seperti yang ditetapkan di bawah per. 28(1) Peraturan Tatatertib juga telah dipatuhi. Perkara 28(4) Peraturan Tatatertib tidak meletakkan apa-apa syarat untuk menjelaskan secara bertulis mengapa satu jawatankuasa siasatan tidak diperlukan. Selanjutnya, tidak terdapat apa-apa dalam peruntukan yang meletakkan bebanan seperti itu ke atas mereka. Oleh itu, untuk membaca syarat-syarat di bawah per. 25(2) (b) ke dalam per. 28(4) Peraturan Tatatertib adalah salah. Ia adalah peruntukan statut yang jelas dan terang dan harus diberikan maksud semulajadi dan biasa. Segala prosedur telah dipatuhi oleh perayu dalam pemecatan responden daripada pekerjaannya.

Case(s) referred to:

Ghazi Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 CLJ 333 SC ***(refd)***

Hari Bahadur Ghale v. PP [2012] 2 CLJ 1006 CA ***(refd)***

Janagi v. Ong Boon Kiat [1971] 1 LNS 42 HC ***(refd)***

Mohd Ahmad v. Yang Dipertua Majlis Daerah Jempol, Negeri Sembilan & Anor [1997] 3 CLJ 135 FC ***(dist)***

Yew Wan Leong v. Lai Kok Chye [1990] 1 CLJ 1113; [1990] 1 CLJ (Rep) 330 SC ***(refd)***

Legislation referred to:

Peraturan-Peraturan Pegawai Lembaga Pertubuhan Peladang (Kelakuan Dan Tatatertib) 1994, rr. 4(2)(c)(ii), 10(1)(a), 12(1)(b), 25(1), (2)(b), 28(4), 38

Evidence Act 1950, ss. 103, 114(g)

Rules of the High Court 1980, O. 18 r. 19

A *For the appellant - Fahri Azzat; M/s Azzat & Izzat*
For the respondent - JJ Naidu; M/s Muhamad & Co

[Appeal from High Court, Johor Bahru; Suit No: MT3-22-672-005]

Reported by Suhainah Wahiduddin

B

JUDGMENT

Mohtarudin Baki JCA:

Brief Facts

C **[1]** The respondent was a former employee of the appellant and started his employment with the appellant on 28 December 1973 as a clerk.

[2] On 21 June 2000, the appellant issued a show cause letter to the respondent alleging that the latter had borrowed a sum of RM40,000 from a contractor, one Encik Madzlan bin Abd Rahman on or about 21 May 1990.
D Subsequently, the appellant brought two charges against the respondent pursuant to r. 28 of the Disciplinary Rules ("the Rules") in relation to the borrowing incident.

[3] The first charge was for behaving in a way that would raise suspicions
E that he was using his official position for his own benefit (r. 4(2)(c)(ii) of the Rules and the second charge was for putting himself in a position of financial obligation with someone who had official business with the appellant (r. 10(1)(a) and 12(1)(b) of the Rules).

[4] On 9 September 2000, the respondent denied the charges and enclosed
F a letter allegedly written by Encik Madzlan dated 6 September 2000 and a statutory declaration by him denying that he lent the respondent the said sum.

[5] On 17 May 2001, the appellant informed the respondent that he was guilty of both charges and inquired whether he wished to offer anything in
G mitigation before the sentence is passed. The respondent replied by stating that he was not satisfied with the said decision and wanted it to be reviewed.

[6] On 25 February 2002, upon considering the facts of the case and the mitigation of the respondent, the appellant informed that the respondent is to be sacked from his employment with effect from 1 March 2002 pursuant
H to r. 38 of the Rules. The appellant also informed the respondent that the latter could appeal the said decision to the Lembaga Rayuan Tatatertib LPP within 14 days. At the time of his dismissal the respondent was an assistant officer of economic affairs with the appellant.

I **[7]** On 14 March 2002, the respondent appealed against the appellant's decision on the ground that a hearing was supposed to be held before the decision was passed and he was not given the opportunity to cross-examine witnesses and scrutinise any related documents.

[8] On 18 November 2002, the Disciplinary Appellate Committee dismissed the respondent's appeal *vide* a letter dated 14 March 2002 and affirmed the disciplinary committee's decision and sentence. The respondent sued the appellant for unlawful dismissal in the Johor Bahru High Court.

Decision Of The High Court

[9] In short, the learned judge decided as follows:

(a) In this case, the disciplinary committee made its decision after considering the respondent's representation. This implies that the disciplinary committee did not accept the respondent's representation. Accordingly, the disciplinary committee proceeded to decide on the sentence;

(b) There is no evidence to show that an investigation committee was appointed. There is no mention whatsoever of any investigation committee in the disciplinary committee's letter dated 17 May 2001;

(c) Under sub-r. 25(2)(b), the opportunity to be heard may only be denied if the disciplinary committee is satisfied that it is not reasonably practical to do so. Whilst the disciplinary committee is so empowered under sub-r. 25(2), the exercise of the power is subject to the condition that the committee shall record its reasons for doing so. In this case, the court did not have the benefit of considering the evidence of the respondent as they elected not to adduce any evidence. However, on the available evidence before the court, there does not appear to be any record by the disciplinary committee stating the reasons why it was impractical to follow the rules;

(d) The appellant's letter dated 22 May 2001 did not cite any reason why it was impractical for the respondent to have the opportunity to be heard. Accordingly, the only inference that can be drawn is that there is no such written record;

(e) The court was of the view that r. 28 must be interpreted in the light of r. 25. The exercise of the disciplinary committee's powers under r. 28 is subject to the overriding provision in r. 25. Since the disciplinary committee decided not to appoint an investigating committee, it was incumbent upon the disciplinary committee to state its reasons in writing; and

(f) In the circumstances of this case, there does not appear to be any reason why it was impractical to give the respondent an opportunity to be heard and to call witnesses. The failure to comply with sub-r. 25(2) is fatal and it has tainted the entire disciplinary proceedings with illegality. Accordingly, the court finds that the dismissal of the respondent is unlawful, null and void. Consequently, the respondent's claim is allowed in prayers (a), (b), (c) and (d) with costs of RM6,000. Damages under prayers (b) and (c) to be assessed by the Deputy Registrar.

A **The Appeal**

[10] In this appeal, learned counsel for the appellant contended that the learned trial judge allowed that respondent's claims based on the abovementioned reasoning, which was not pleaded or even submitted by the respondent during the trial.

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[11] The appellant further contended that the learned judge had gone on a frolic and decided the case without regard to the respondent's pleaded case or the appellant's submission.

[12] Thus, the appellant prayed this court to allow this appeal and/or the C case be remitted back for retrial in the High Court or alternatively, the respondent's claim be dismissed with costs.

[13] Despite numerous grounds of appeal stated in the memorandum of appeal, the appellant's submission (in this appeal) centred on the following four issues namely:

D

(a) the High Court failed to put the election of no case to answer to the appellant's lawyer;

(b) the High Court failed to appreciate that the court has no jurisdiction to grant the declaration sought by the respondent;

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(c) the High Court failed to consider the appellant's written submission and appreciate that the respondent's submission was not its pleaded case; and

(d) the High Court had incorrectly decided that the interpretation of Rules 25 and 28 of the Peraturan-Peraturan Pegawai Lembaga Pertubuhan Peladang (Kelakuan dan Tatatertib) 1994 (the Disciplinary Rules) were F relevant in deciding the respondent's claim.

Decision Of The Court Of Appeal

First Issue: The High Court Failed To Put The Election Of No Case To Answer To The Appellant's Lawyer.

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[14] At the close of the respondent's case, we found that the learned judge did not put an election of no case to answer to the appellant's counsel. We found no record relating to this election anywhere in the grounds of judgment or in the notes of proceedings.

H **[15]** It is trite that the learned judge is under a duty to put the election of no case to answer to the defence counsel. It is to ensure that the court would not decide a matter on a submission of no case to answer until and unless there is such an election. In the absence of such election, the defence counsel is entitled to call further evidence and not being bound by such election.

I **[16]** Therefore, we are of the view that the learned judge erred in failing to put such election to the appellant's counsel during the trial.

Second Issue: The High Court Failed To Appreciate That The Court Has No Jurisdiction To Grant The Declaration Sought By The Respondent.

[17] The respondent's claim was for a declaration that his dismissal by the appellant was unlawful. Consequentially, the respondent prayed for damages and interest. His claim for a declaration reads as follows:

> Bahawa pembuangan kerja Plaintif oleh Defendan diisytiharkan sebagai batal dan tidak sah. (unlawful dismissal)

[18] It was submitted by learned counsel for the appellant that the High Court has no jurisdiction to grant such declaration. The appellant relied on the case of *Mohd Ahmad v. Yang Dipertua Majlis Daerah Jempol, Negeri Sembilan & Anor* [1997] 3 CLJ 135 where it was decided that:

> A claim by an employee for reinstatement still has that ring of incongruity to make lawyers extremely wary, for they are always acutely aware of the principle that the law will not specifically enforce a contract without any danger of service between master and servant and that the master has always the power to dismiss him in breach of such contract without any danger of being asked or compelled to re-employ him, thus the only remedy left to the servant is to sue in damages. The principle is that the Court will not order specific performance of a contract of personal service.
>
> Following the principle aforesaid ('the principle'), the logical result will be that a dismissed employee cannot claim any declaration that 'his dismissal was void' and if he wants to cast his pleading in the form of a declaration, then he can claim a declaration, eg he was dismissed in breach of the contract of service and that he claims damages for such breach. To claim that his dismissal was void would indicate that he wants to have his job back. It is therefore understandable and it was quite natural for learned counsel to apply under O 18 r 19 of the RHC to strike out the statement of claim for such reinstatement, with the statement of claim claiming a declaration that 'he is still' market supervisor, with the clearest implication that his earlier dismissal is void or invalid.

[19] In reply, learned counsel for the respondent stated that the principle of the Federal Court in the abovementioned case also recognised that there were two categories of the claimant's employee who were exempted from the above principle. It was further submitted that the Federal Court was not confining the said principle only on the two exceptions but would consider further exceptions if it is formulated and grounded.

[20] Upon perusing the submission by both parties, we are of the view that the grounds of judgment goes on to identify the two exceptions to the above principle which are not applicable in this appeal. A simple reason is that the first exception applies to a claim made in the Industrial Court and the second exception only applies to those who are the holders of public office. Unfortunately, the respondent did not fall in any of these categories.

[21] We agreed in principle that a dismissed employee cannot claim any declaration that his dismissal was void and expect for reinstatement. But the learned judge in granting the declaration did not make an order of reinstatement of the respondent to his previous post. There was in fact no prayer for reinstatement in the amended statement of claim. The main prayer was for a declaration that his dismissal was unlawful. In consequence thereof he asked for general and special damages.

[22] With respect to learned counsel for the appellant, the facts in *Mohd Ahmad v. Yang Dipertua Majlis Daerah Jempol, Negeri Sembilan & Anor* (*supra*) were however different. In that case the subject matter of the application to strike out the statement of claim under O. 18 r. 19 Rules of the High Court 1980 was for the purpose of determining the relief for reinstatement. The High Court however struck out the whole suit including the appellant's claim for damages for wrongful dismissal. The Federal Court held that the High Court "has gone too far" when it dismissed the whole claim without trial. It therefore allowed the appellant's appeal, set aside the order of the High Court striking out the whole claim and ordered an early hearing of the case to determine whether the appellant's dismissal was wrongful or improper and if so, access the damages, if any.

Third Issue: The High Court Failed To Consider The Appellant's Written Submission And Appreciate That The Respondent's Submission Was Not Its Pleaded Case.

[23] We agree with learned counsel for the appellant that if a comparison is to be made between the grounds of judgment of the learned judge with the appellant's submission and reply submission after the trial, we could observe that the learned judge did not deal with any of the issues raised, namely:

(i) the respondent's submission that an inquiry committee was held but the respondent was not called to participate, has not been pleaded;

(ii) the respondent failed to prove his claim;

(iii) the learned judge was not entitled to rely on documents in the disputed bundle of documents since they have not been admitted;

(iv) the respondent failed to call Encik Madzlan and this should attract an adverse inference under s. 114(g) of the Evidence Act 1950; and

(v) the respondent failed to prove his loss and there was no agreement for damages to be assessed.

[24] We find none of the abovementioned issues addressed by the learned judge in his written grounds of judgment. We agree with the submission put forward by learned counsel for the appellant that, it is essential for the learned judge to scrutinise every issue raised by the parties of the proceedings. What the learned judge had considered can only be gathered

from the grounds of judgment. From the grounds of judgment, the learned judge had failed to appreciate the abovementioned issues in his ground of judgment. Thus, it raises the inference they were not considered at all.

[25] From the appeal records, the essence of the respondent's pleaded claim can be found in paras. 21 and 22 of the statement of claim and reads as follows (at pp. 23 to 24 of the appeal record bahagian A):

> 21. Plaintif menyatakan bahawa tindakan Defendan terhadap Plaintif telah melanggar peruntukan 25 Peraturan-Peraturan Pegawai LPP (Kelakuan Tatatertib 1994) iaitu plaintif tidak diberi peluang yang munasabah untuk didengar.
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> 22. Plaintif menyatakan bahawa tindakan Defendan telah melanggar peruntukan 28 Peraturan-Peraturan Pegawai LPP (Kelakuan Tatatertib 1994) iaitu Defendan gagal menubuhkan jawatankuasa siasatan dan gagal memanggil saksi-saksi untuk diperiksa dan disoal balas.

[26] With regards to para. 21, we find no submission by the respondent on this issue. The respondent submitted that he was not accorded an oral hearing which resulted in the appellant breaching r. 25(2) of the Rules. We agree with the submission of learned counsel for the appellant that there is a slight difference between "a reasonable opportunity to be heard" and "an oral hearing" as discussed in *Ghazi Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 CLJ 333; [1994] 2 MLJ 114, when the Supreme Court held that:

> The 'right to be heard' does not mean the right to be heard orally. What it means is that the officer concerned should be given a full opportunity of stating his case.

[27] Further down (at p. 128), the Supreme Court went on to say that:

> There should not be any more lingering doubt as to what the phrase 'right to be heard' or 'opportunity of being heard' mean at common law or in the statute, and it must be accepted that the issue has been settled, as well as can be on the authorities cited above. Therefore, this point is *cadit quaestio*.

[28] In para. 21, the respondent pleaded that he was not given a reasonable opportunity to be heard but did not plead that he was not afforded an oral hearing at the committee of inquiry. However, from the evidence we find that he was given such opportunity ie, to be heard. He was also given sufficient time to reply to the show cause letter (about two months).

[29] It is trite that the court cannot decide on an issue that was not pleaded by the parties as been decided in *Yew Wan Leong v. Lai Kok Chye* [1990] 1 CLJ 1113; [1990] 1 CLJ (Rep) 330, SC when the Supreme Court cited *Janagi v. Ong Boon Kiat* [1971] 1 LNS 42; [1971] 2 MLJ 196 and agreed with the following passage of Sharma J which stated:

> The Court is not entitled to decide a suit on a matter on which no issue has been raised by the parties. It is not the duty of the Court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point. In disposing of a suit or matter involving a disputed question of fact it is not proper for the Court to displace the case made by the party in its pleadings and give effect to an entirely new case which the party had not made out in its own pleadings. The trial of the suit should be confined to the pleas on which the parties are at variance.

[30] Therefore, upon considering the submissions of both parties we are of the considered view that the learned judge had erred in considering and accepting the respondent's submission on this issue. The respondent had failed to prove a pleaded case that: he was not given a reasonable opportunity to be heard but at the same time, he adduced evidence to prove that he was given of such opportunity.

[31] Next, para. 22 of the amended statement of claim stated that the appellant did not convene an inquiry committee and did not follow the procedural rules in dismissing the respondent. Learned counsel for the appellant argued that the respondent had failed to prove his case under this paragraph because the respondent himself had submitted that an inquiry committee was held but he was not called to participate in the inquiry committee (para. 6.10 at pp. 197 to 199 of the appeal record volume 2). Therefore, the appellant submitted that the respondent must prove in evidence that the appellant had established the inquiry committee without his knowledge pursuant s. 103 of the Evidence Act 1950. We agree with the submission of learned counsel for the appellant on this issue.

Fourth Issue: The High Court Had Incorrectly Decided That The Interpretation Of R. 25 And 28 Of The Peraturan-Peraturan Pegawai Lembaga Pertubuhan Peladang (Kelakuan Dan Tatatertib) 1994 (The Disciplinary Rules) Were Relevant In Deciding The Respondent's Claim.

[32] Rule 25(1) provides that no officer can be dismissed or reduced in rank in any disciplinary proceedings unless he is informed in writing about the intended disciplinary proceedings and he is given a reasonable opportunity to be heard.

[33] We find that all the pre-requisite under this Rule have been fulfilled ie, by giving him a show cause letter informing him about the charges preferred against him and he was given about two months to reply to the said letter before the committee decided to dismiss him from his employment with the appellant.

[34] Rule 28(1) discuss on the procedural rules which the disciplinary committee had to fulfil. Learned counsel for the appellant submitted that all the procedures have been complied with. The procedure (in short) is to prepare a set of facts together with the intended punishment and send them

to the respondent. The respondent, upon receipt of the documents was to prepare a written representation explaining why such disciplinary action should not be taken against him. It was done so in the instant case.

[35] We agree with the submission by learned counsel for the appellant that the learned judge's complaints about the failure to record the reason why the investigation committee was not appointed are misplaced.

[36] Moreover, the procedure as stipulated under r. 28(1) had been complied with. Rule 28(4) does not place any requirement to explain in writing, why the investigation committee is not required. Furthermore, there is nothing in the sub-provision that places such burden on them.

[37] Therefore, to read the requirements under r. 25(2)(b) into r. 28(4) is wrong. It is a clear and an unambiguous provision of the statute and must be given their natural and ordinary meaning. See *Hari Bahadur Ghale v. PP* [2012] 2 CLJ 1006; [2012] MLJU 947. Therefore, we find that the learned judge's decision (even not submitted by the parties or pleaded in the pleadings) on this issue is baseless.

Conclusion

[38] Based on the above reasons, we are of the view that the learned judge had erred in allowing the respondent's claims at the court below. We find that all the procedures had been complied with by the appellant in dismissing the respondent from his employment. We unanimously allow this appeal with costs of RM6,000.